IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2867 OF 2007

Shivaji Bapu Ukirde .... Petitioner

versus

Dnyanu Pandu Desai & ors..... Respondent.

Shri N.V.Bandiwadekar for the petitioner.
Shri N.J.Patil for Respondents 1 tio 3.

CORAM; A.P. DESHPANDE, J.
DATED; 19TH SEPTEMBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioner is original plaintiff who instituted a suit for perpetual injunction seeking to restrain the respondent from interfering with the plaintiff's enjoyment of the suit property. The trial court after considering the application for temporary injunction granted the relief prayed for by the plaintiff. Aggrieved by the order granting temporary injunction, passed by the trial court, the respondent filed a Misc. Civil Appeal challenging the impugned order. In the Misc. Civil Appeal the present respondent filed an application for stay of the order of temporary injunction passed by the trial court.

The present petitioner filed an application seeking time to file reply. The same was granted. However, while granting time to file reply the Addl. District Judge granted ad-interim stay to the order passed by the trial court until filing of say by the plaintiff. The plaintiff filed say on 2-4-2007. On 2-4-2007 the respondent herein filed an application for extension of stay. The court extended the stay. Aggrieved by the said extension and the stay order the present writ petition came to be filed.

3. The learned Single Judge of this court directed parties to maintain statusquo and directed the Appellate Court to proceed with the hearing of the application for stay. Though, this court made it expressly clear that the Appellate Court shall be free to proceed with the hearing of the application for stay, the District Judge by an order dated 22-6-2007 has observed that, as the matter is pending in the High Court, it will not be proper on his part to hear the appeal finally, and the appeal has been thus adjourned. The interim order passed by this court directing the parties to maintain statusquo is operating since 26-4-2007. In the facts of the present case, I deem it appropriate to extend the said order for sometime and seek final disposal of the Misc. Civil Appeal expeditiously by the first

Appellate Court. I do not see that any purpose would be achieved by directing the decision of the stay application. Having regard to the totality of the facts and circumstances, I direct the First Appellate Court, to decide the Misc. Civil Appeal as expeditiously as possible and at any rate within a period of three months from today. The interim order dated 25-4-2007 passed by this court shall continue to operate till the decision of the Misc. Civil Appeal by the District Court. The First Appellate Court shall proceed to decide the appeal uninfluenced by any order passed by this Court in the proceedings. Writ Petition is thus disposed of. Rule made absolute in the above terms.

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